IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2155 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGYODAYA RESTAURANT

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 2155 of 2004

MR TV SHAH for Petitioner No. 1

MR MG NAGARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/10/2004

ORAL JUDGEMENT

Rule. Mr.Nagarkar appearing for the respondent waives service of rule on behalf of respondent. With the consent of learned advocates for parties, matter is taken

up for final hearing today.

2. The only question arises for consideration of this court is: Whether it is obligatory on the part of the respondent Corporation to give effect to the judgment of the Small Causes Court in Tax Appeal and its confirmation thereof by the Division Bench of this court in the subsequent order forming part of the same block of four years or the citizen should be relegated to the remedy of preferring appeal after its finalisation by the corporation?

3. The short facts of the case are that the corporation made the assessment for the year 1996-97 and after the matter was carried before the appellate authority and after the appeal the matter was carried by the petitioner before the court of Small causes being MAV Appeal No.5189/98. There is no dispute on the point that as per the decision, dated 28.4.2000 passed by the Small Causes Court the appeal of the petitioner is allowed partly and the rental value of the premises is fixed at Rs.37,847/-, that for the year 1997-98 as per the decision, dated 24.4.2000 in Appeal No.5190/98 the rental value is fixed at the same rate for the Assessment Year 1996-97. There is also no dispute on the point that the matter was carried by the corporation before this court and as per the decision, dated 20.2.2001 of the Division Bench of this court(Coram: M.R.Calla,J as he then was and J.R.Vora,J) in First Appeal No.3504/00 the appeal is dismissed and the order passed by the Small Causes Court is confirmed. Therefore, the net effect of both the aforesaid orders of the Small Causes Court as well as Division Bench of this Court is that for the Assessment Years of 1996-97 and 1997-98 the rental value is fixed at Rs.37,847/- of the premises in question.

4. It is the grievance of the petitioner in this petition that the effect of the judgment of the Small Causes Court and the judgment of the Division Bench of this Court is not given by the respondent corporation for the subsequent years of 1998-99 and 1999-2000. However, Mr.Nagarkar for the respondent corporation submitted that the judgment upon which the reliance placed by the petitioner is related to the period of 1996-97 and 1997-98 and they are not related to the period 1998-99 and 1999-2000 and he further submitted that as the judgment is delivered in Apri, 2000 by the Small Causes Court it can not be given retrospective effect for the year 1998-99 and 1999-2000. Mr.Nagarkar also submitted that in taxation matters each year is to be separately considered and no appeal is preferred by the petitioner

against the Assessment years 1998-99 and 1999-2000 and therefore the effect can not be pressed by the petitioner of the judgment of the Small Causes Court for the year 1998-99 and 1999-2000. It is submitted that similar matters were considered by this court (Coram: A.R.Dave,J) in SCA No.10338/03 and as per order, dated 27.4.2000 passed therein the corporation was directed to finalise the bills and the petitioner is relegated to the remedy of challenging the decision of the corporation in accordance with law. Mr.Nagarkar also relied upon the decision of this court (Coram: M.R.Shah,J) in SCA No.10463/2003 daed 25.6.04 on the basis of earlier order dated 27.4.04 passed in SCA No.10338/03. He, therefore, submitted that the corporation may be directed to finalise the bills of the petitioner and the petitioner may be relegated to prefer appeal before the Small Causes Court for the year 1998-99 and 1999-2000.

5. Having considered the above, it appears that there is no dispute on the point that the assessment in question is for the block of four years from 1996-97, 1997-98, 1998-99 and 1999-2000. When the entry of assessment was made in the first year of block, i.e. of 1996-97, the petitioner has carried the matter before the appellate authority and thereafter before the Small Causes Court and ultimately the Small Causes Court has finalsed rental value of Rs.37,847/-. It is true that the assessment for year can not be said to be complete and final even for subsequent year, but as per the scheme of the Corporation, the assessment is made for block of period of four years, and in normal circumstances if order of assessment is made resulting into higher rental value, the very entry of the value made for 1996-97 will be continued and carried forward for the period of 1997-98, 1998-99 and 1999-2000. It appears that for the years 1996-97 and 1997-98 the petitioner did prefer the appeal against the assessment finalised at Rs.37,847/-and the said assessment is confirmed by the Division Bench of this court and therefore even for the year 1998-99 and 1999-2000 same is going to be the value even if the direction is given in this petition also, as per the the above order, dated 27.4.04 and 25.6.04 passed by this court.

6. However, the aspect which requires consideration is: Should the corporation, which is a statutory authority and instrumentality of State within the meaning of Article 12 of the Constituion, be allowed to create a situation resulting into more litigation against it by taking a technical stand that the entry shall be finalised at par with the assessment year of 1996-97 and

the petitioner may prefer appeal before the Small Causes Court against such entry? Even if this court is inclined to accept such a technical stand on the part of the corporation, the consequence would be that in the appeal in view of the order passed by the Small Causes Court same assessment of Rs.37,847/- is to be finalised for the years 1998-99 and 1999-2000. I am inclined to take such a view because there is no material produced on the record before this court to show that there is no separate assessment order for the year 1998-99 and 1999-2000 but the stand is that the same is the entry for assessment as adopted for the years 1996-97 and 1997-98. Even if the observations made by the Division Bench of this court in the case of Municipal Corporation of City of Ahmedabad vs Oriental Fire & General Insurance Co.Ltd reported in 94(2) GLR 1498 at para 7 are considered upon which reliance is placed by Mr.Nagarkar read with the decision of the Division Bench of this court in the case of Ahmedabad Municipal Corporation vs Vireshchand Chandrakant Desai reported in AIR 2000 Gujarat 379 upon which reliance is placed by the petitioner are considered, the consequence would be that technically it can be said that the decision of the Small Causes Court and its confirmation thereof by this court for the fixation of the rental value at Rs.37,847/- would apply for the year 1996-97 and 1997-98 only. But, in view of the facts and circumstances that for the year 1998-99 and 1999-2000, the same entry as it was for the year 1996-97 and 1997-98 is carried forward as the assessment was for the period of block of 4 years and as there is no material produced on record to show that there was any modification in the assessment of rental value for 1998-99 and 1999-2000 , I find that normal principle for relegating the party to the statutory remedy by way of self-imposed restriction to powers of this court under Article 226 of the Constitution should not be made applicable. When it is satisfactorily demonstrated before this court, the corporation is required to take the same stand, and even if the parties are relegated to the remedy of preferring appeal net effect would continue for fixation of the value at Rs.37,847/-, it would be just and proper to direct the corporation to finalise the entry for the years 1998-99 and 1999-2000 on the same basis as it was for the assessment years 1996-97 and 1997-98 and to further direct the corporation to reduce the assessment on the same line as per the decision of the Small Causes Court by fixing the valuation at Rs.37,847/for the assessment years 1998-99 and 1999-2000 and to issue bill to the petitioner accordingly after giving effect to the same. Such discretion would also help the Corporation to reduce unnecessary litigation

against it. Even otherwise also, it is well settled that the alternative remedy is not a bar to the jurisdiction of this court under Article 226 of the Constitution.

7. In view of the above, the respondent corporation is directed to issue fresh revised bill for the assessment years 1996-97, 1997-98, 1998-99 and 1999-2000 on the basis of rental value at Rs.37,847/- and in the light of observations made by this court hereinabove. Such exercise shall be completed as early as possible preferably within a period of one month from the date of receipt of this court.

8. So far as water tax is concerned, the contentions of both sides are kept open. The petitioner may make representation for the period from 2001-2002 onwards and if such representation is made same shall be considered in accordance with law by the Municipal Commissioner of the Corporation.

9. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances there shall be no costs.

12.10.04 (JAYANT PATEL,J)